

Simeon M. Herskovits, Nevada Bar No. 11155
Iris Thornton, *pro hac vice*
ADVOCATES FOR COMMUNITY AND
ENVIRONMENT
P.O. Box 1075
El Prado, NM 87529
Phone: (575) 758-7202
Email: simeon@communityandenvironment.net

Sean Rowe, Nevada Bar No. 10977
Mineral County District Attorney
P.O. Box 1210
Hawthorne, NV 89415
Phone: (775) 945-3636
Email: srowe@mineralcountynv.org

*Attorneys for Appellants Mineral County, Nevada and
Walker Lake Working Group*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
WALKER RIVER PAIUTE TRIBE,)
)
Plaintiff-Intervenor,)
vs.)
)
WALKER RIVER IRRIGATION DISTRICT,)
a corporation, et al.,)
)
Defendants.)
)

Case No. 3:73-CV-00127-MDD-WGC

**MINERAL COUNTY AND
WALKER LAKE WORKING
GROUP ANSWER TO SECOND
AMENDED COUNTERCLAIM OF
THE WALKER RIVER PAIUTE
TRIBE**

Counterdefendants Mineral County, Nevada, and Walker Lake Working Group
("MC/WLWG"), pursuant to the Court's Stipulated Scheduling Order and Discovery Plan dated
March 7, 2019 (ECF No. 2437), hereby file this Answer to the Second Amended Counterclaim
of the Walker River Paiute Tribe ("Second Amended Counterclaim"), dated May 3, 2019 (ECF
No. 2479). In answering the allegations of the Second Amended Counterclaim, MC/WLWG
affirm, deny and allege as follows:

INTRODUCTION

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2 1. The allegations in Paragraph 1 of the Second Amended Counterclaim amount to
3 legal conclusions which do not require a response. However, to the extent that the allegations in
4 Paragraph 1 simply state WRPT's articulation of its own claim, MC/WLWG admit. Because
5 MC/WLWG does not have sufficient information to admit or deny the validity of such claim,
6 MC/WLWG's admission does not extend to the validity of that claim, and is limited to a
7 recognition that this paragraph articulates WRPT's understanding of its own claim.
8

9 2. The allegations in Paragraph 2 of the Second Amended Counterclaim amount to
10 legal conclusions which do not require a response. However, to the extent that the allegations in
11 Paragraph 2 simply state WRPT's articulation of its own claim, MC/WLWG admit. Because
12 MC/WLWG does not have sufficient information to admit or deny the validity of such claim,
13 MC/WLWG's admission does not extend to the validity of that claim, and is limited to a
14 recognition that this paragraph articulates WRPT's understanding of its own claim.
15

16 3. The allegations in Paragraph 3 of the Second Amended Counterclaim amount to
17 legal conclusions which do not require a response. However, to the extent that the allegations in
18 Paragraph 3 simply state WRPT's articulation of its own claim, MC/WLWG admit. Because
19 MC/WLWG does not have sufficient information to admit or deny the validity of such claim,
20 MC/WLWG's admission does not extend to the validity of that claim, and is limited to a
21 recognition that this paragraph articulates WRPT's understanding of its own claim.
22

JURISDICTION

23 4. MC/WLWG admit the allegations in Paragraph 4 of the Second Amended
24 Counterclaim.
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PARTIES

5. MC/WLWG admit the allegations in Paragraph 5 of the Second Amended Counterclaim.

6. MC/WLWG admit the allegations in Paragraph 6 of the Second Amended Counterclaim.

GENERAL ALLEGATIONS

7. MC/WLWG admit the allegations in Paragraph 7 of the Second Amended Counterclaim.

8. MC/WLWG admit the allegations in Paragraph 8 of the Second Amended Counterclaim.

9. MC/WLWG admit the allegations in Paragraph 9 of the Second Amended Counterclaim.

10. MC/WLWG admit the allegations in Paragraph 10 of the Second Amended Counterclaim.

11. On information and belief, MC/WLWG admit the allegation in Sentence 1 of Paragraph 11 of the Second Amended Counterclaim which states that subsequent to the entry of the Walker River Decree numerous persons and other entities have appropriated additional waters from the Walker River and its tributaries. MC/WLWG do not have sufficient information to admit or deny the allegation that water uses post-dating the entry of the decree have not been subject to any administrative process, and on that basis must deny it.

12. On information and belief, MC/WLWG admit the allegations in Sentences 1 and 2 of Paragraph 12 of the Second Amended Counterclaim. MC/WLWG do not have sufficient information to admit or deny the allegation that WRPT is entitled to store water from the Walker

1 River in Weber Reservoir for all purposes recognized under federal law, including but not
2 limited to irrigation, stock watering, fish and wildlife, recreation, domestic, commercial, and
3 industrial uses, and on that basis must deny it.

4
5 13. MC/WLWG do not have sufficient information to admit or deny the allegation in
6 Paragraph 13 of the Second Amended Counterclaim that the Tribe is able to irrigate more than
7 the 2,100 acres that is entitled to irrigate under the terms of the final Decree, and on that basis
8 must deny it.

9
10 14. MC/WLWG do not have sufficient information to admit or deny the allegation in
11 Paragraph 14 of the Second Amended Counterclaim that WRPT is entitled to use surface water
12 from the Walker River on the lands added and restored to the Reservation in 1928, 1936, and
13 1972 for all purposes recognized under federal law, including but not limited to irrigation, stock
14 watering, fish and wildlife, recreation, domestic, commercial, and industrial uses, and on that
15 basis must deny it.

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17 15. MC/WLWG do not have sufficient information to admit or deny the allegation in
18 Paragraph 15 of the Second Amended Counterclaim that WRPT is entitled to use groundwater
19 underlying and adjacent to the lands within the Reservation, including groundwater underlying
20 and adjacent to the lands that have never left the Reservation, on the lands added and restored to
21 the Reservation in 1918, 1928 1936, and 1972, for all purposes recognized under federal law,
22 including but not limited to irrigation, stock watering, fish and wildlife, recreation, domestic,
23 commercial, and industrial uses, and on that basis must deny it.

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25 16. MC/WLWG admit the allegation in Paragraph 16 of the Second Amended
26 Counterclaim.

FIRST CLAIM FOR RELIEF

17. Paragraph 17 of the Second Amended Counterclaim incorporates by reference the previous 16 paragraphs of the Second Amended Counterclaim. MC/WLWG hereby incorporate by this reference our previously stated responses to Paragraphs 1-16 as our response to Paragraph 17.

18. MC/WLWG do not have sufficient information to admit or deny the allegation in Paragraph 18 of the Second Amended Counterclaim that WRPT is entitled to store water from the Walker River in Weber Reservoir for all purposes recognized under federal law, including but not limited to irrigation, stock watering, fish and wildlife, domestic, commercial, and industrial uses, and on that basis must deny it.

19. MC/WLWG do not have sufficient information to admit or deny the allegation in Paragraph 19 of the Second Amended Counterclaim that WRPT is entitled to a storage right of approximately 13,000 acre feet, plus evaporation and seepage, with a priority date of June 16, 1933, and on that basis must deny it.

SECOND CLAIM FOR RELIEF

20. Paragraph 20 of the Second Amended Counterclaim incorporates by reference the previous 19 paragraphs of the Second Amended Counterclaim. MC/WLWG hereby incorporate by this reference our previously stated responses to Paragraphs 1-19 as our response to Paragraph 20.

21. MC/WLWG do not have sufficient information to admit or deny the allegation in Paragraph 21 of the Second Amended Counterclaim that WRPT is entitled to use surface water from the Walker River on the lands added and restored to the Reservation in 1928, 1936, and 1972 for all purposes recognized under federal law, including but not limited to irrigation, stock

1 watering, fish and wildlife, domestic, commercial, and industrial uses, and on that basis must
2 deny it.

3 22. MC/WLWG do not have sufficient information to admit or deny the allegation in
4 Paragraph 22 of the Second Amended Counterclaim that WRPT is entitled to a priority date of
5 November 29, 1859, with regard to surface water rights on lands restored to the Reservation in
6 1936 and 1972, and on that basis must deny it.

7 23. MC/WLWG do not have sufficient information to admit or deny the allegation in
8 Paragraph 23 of the Second Amended Counterclaim that WRPT is entitled to a priority date
9 coinciding with the dates of the addition of lands to the Reservation, with regard to surface water
10 rights on lands added to the Reservation in 1928, 1936, and 1972, and on that basis must deny it.

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13 **THIRD CLAIM FOR RELIEF**

14 24. Paragraph 24 of the Second Amended Counterclaim incorporates by reference the
15 previous 23 paragraphs of the Second Amended Counterclaim. MC/WLWG hereby incorporate
16 by this reference our previously stated responses to Paragraphs 1-23 as our response to Paragraph
17 24.

18 25. MC/WLWG do not have sufficient information to admit or deny the allegation in
19 Paragraph 25 of the Second Amended Counterclaim that WRPT is entitled to the groundwater
20 underlying and adjacent to the lands of the Reservation, including the lands that never left the
21 Reservation, which WRPT alleges include any and all relicted lands, and the lands added and
22 restored to the Reservation in 1918, 1928, 1936, and 1972, for all purposes recognized under
23 federal law, including but not limited to irrigation, stock watering, fish and wildlife, domestic,
24 commercial, and industrial uses, and on that basis must deny it.

1 26. MC/WLWG do not have sufficient information to admit or deny the allegation in
2 Paragraph 26 of the Second Amended Counterclaim that WRPT is entitled to a priority date of
3 November 29, 1859, with regard to groundwater rights on lands restored to the Reservation in
4 1918, 1936, and 1972, and on that basis must deny it.
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6 27. MC/WLWG do not have sufficient information to admit or deny the allegation in
7 Paragraph 27 of the Second Amended Counterclaim that WRPT is entitled to priority dates
8 coinciding with the dates of the addition of lands to the Reservation, with regard to groundwater
9 rights on lands added to the Reservation in 1918, 1928, and 1936, and on that basis must deny it.
10

11 WHEREFORE, MC/WLWG pray that:

12 1. The Court expressly acknowledge, in any decree or judgment resulting from this
13 subproceeding, that any additional rights granted to the United States on behalf of WRPT must
14 be incorporated in the determination of the minimum average inflows to Walker Lake required
15 under the public trust doctrine, should the Court determine that the public trust doctrine requires
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1 that average minimum inflows be provided to Walker Lake to return the Lake to a reasonable
2 state of health that would restore and maintain Walker Lake's public trust uses and values.

3 Respectfully submitted this 1st day of August, 2019,
4

5 Simeon M. Herskovits

Simeon M. Herskovits, Nevada Bar No. 11155

6 Iris Thornton, *pro hac vice*

7 ADVOCATES FOR COMMUNITY AND
ENVIRONMENT

8 P.O. Box 1075

El Prado, NM 87529

9 Phone: (575) 758-7202

10 Email: simeon@communityandenvironment.net

11 Sean Rowe, Nevada Bar No. 10977

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13 Phone: (775) 945-3636

14 Email: srowe@mineralcountynv.org

15 *Attorneys for Appellants Mineral County, Nevada and*
16 *Walker Lake Working Group*

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2019, service of **MINERAL COUNTY AND
WALKER LAKE WORKING GROUP ANSWER TO SECOND AMENDED
COUNTERCLAIM OF THE WALKER RIVER PAIUTE TRIBE** was made through the
Court's electronic filing and notice system to all of the registered participants.

By /s/ Simeon M. Herskovits
Simeon M. Herskovits